

**Conference for Food Protection
2020 Issue Form**

Issue: 2020 I-003

Council Recommendation: Accepted as Submitted _____ Accepted as Amended _____ No Action _____

Delegate Action: Accepted _____ Rejected _____

All information above the line is for conference use only.

Issue History:

This is a brand new Issue.

Title:

FRC Food Code Amendment

Issue you would like the Conference to consider:

The Food Recovery Committee suggests the Conference recommend that FDA 1) modify the most current version of the FDA Model Food Code to include a definition of food donation and 2) issue interpretive guidance of existing Food Code requirements addressing the donation of food to individuals in need.

Public Health Significance:

Donation of food by regulated retail foodservice establishments can reduce food waste and provide food assistance to those in need. However, the current FDA Food Code, and preceding versions, do not clearly address this practice. As food donation, rescue, and recovery practices have expanded in recent years, so too has the need for knowledge and guidance in the Food Code to address these practices. A report by the Harvard Law School "Food Safety Regulations & Guidance for Food Donations: A Fifty-State Survey of State Practices" (March 2018) https://www.chlpi.org/wp-content/uploads/2013/12/50-State-Food-Regs_March-2018_V2.pdf, notes that 12 states have added provisions for food donation into their Food Codes, with 39 states having no relevant legislation. The report further noted that even in the 12 states where relevant laws or regulations exist, the scope varies widely, and most are quite narrow. Food assistance organizations help individuals and families meet emergency food needs and, increasingly, provide 11.1% of U.S. households with their daily food needs. USDA Economic Research Service. 2018. Food Security Status of U.S. Households in 2018. <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/key-statistics-graphics/>

Specifically, addressing food donation in the FDA Food Code and providing guidance will help ensure safe food donations and provide for consistent regulation of the donation process. The lack of uniformity among public health officials in applying food safety preventive controls to food donation practices has created a disincentive among potential food donors. Food establishments may be reluctant to donate food in the absence of clear

guidance on topics such as time/temperature controls, and packaging and labeling of food that is offered to organizations for distribution to those in need. Without guidance clarifying the process for safe food donation within the Food Code, food establishments may opt not to donate food due to concern over the risks associated with civil liability. The 2014 report "Analysis of U.S. Food Waste Among Food Manufacturers, Retailers, and Restaurants" https://foodwastealliance.org/wp-content/uploads/2014/11/FWRA_BSR_Tier3_FINAL.pdf , notes that in a survey of 1000 restaurants, only 22 percent donated food. Two of the barriers that survey respondents listed to donating food were liability (67 percent small operators, 56 percent of retailers with 10 or more locations) and regulatory constraints (56 percent both sectors). A 2019 survey conducted by Harris County Public Health, Pasadena, Texas on food donation practices found that barriers to donation included liability concerns and lack of knowledge that food donation was an allowed practice. The Harris County survey further concluded that respondents would be more likely to donate food if clear guidance was available on how to safely offer food to those in need.

Individuals seeking assistance from food pantries or emergency feeding operations are at higher risk for serious complications resulting from a foodborne illness. A study published in 2011 (B.M. Lund, S.J. O'Brien. 2011. Foodborne Path. Dis. 8:961-973 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4555333>), indicated that individuals eligible for food assistance were at heightened risk of contracting a foodborne illness compared to the general population. Food insecurity has been tied to a myriad of negative health outcomes, particularly in children, including poorer overall physical health, cognitive problems, and anemia. Heart disease, food allergies, mental health problems, obesity, and poor self-reported health, especially symptoms linked to psychological suffering, were found to be more prevalent in food insecure populations than food secure populations.

For non-shelf stable food donation to be accomplished in a manner that provides safe food, the foods must be obtained from regulated food establishments and the conditions for preparation and handling of the food must be the same as for any food offered to the consumer from the regulated establishment. Controlled processing and post-processing handling are required for the safe distribution of donated food.

The proposals in this Issue address the lack of clarity that confronts both operators and regulators around the concern of food donated by regulated food establishments to help feed those in need. Adding a definition and providing guidance to support the practice of food donation(s) will help to address the confusion surrounding what food(s) can be safely donated and address/resolve the applicable sections of the Food Code supporting the safe practice of food donation with the goal of protecting public health.

A primary line of defense in ensuring that food meets the requirements of the proposed 3-101.12 is to obtain, transport and hold food in a manner that complies with Chapter 3. It is also critical to monitor food products to ensure that, during the donation process, food items do not become unsafe or adulterated. The regulatory community, industry, distributors and consumers should exercise vigilance in controlling the conditions to which foods are subjected and remain alert to signs of abuse.

Recommended Solution: The Conference recommends...:

that a letter be sent to the FDA requesting the following:

1. Amendment of the most current version of the Food Code to include:

a) Add general provision as section 3-101.12 Donation of Food, acknowledging that it is appropriate for licensed retail and foodservice establishments to donate food to organizations provided that the food has been stored, held, prepared or displayed in a manner that is in accordance with the applicable food safety requirements contained in the Food Code. Text to be considered for inclusion in the CFP Issue submission could be as follows: "FOOD that has not been received, stored, held, prepared, displayed, or labeled in accordance with Chapter 3 shall not be offered for FOOD DONATION."

b) Add a definition of the term "FOOD DONATION" to section 1-201.10 (B) to establish a recognized definition for that term so that when it is used in the Food Code, its meaning is widely understood as distributing food to another organization for charitable purposes with the intention that it be consumed by humans. Text to be considered for inclusion in the CFP Issue submission could be as follows: "FOOD DONATION: Practice by which a FOOD ESTABLISHMENT offers FOOD at no cost to an organization for distribution to, and consumption by, individuals in need. The donated FOOD is not offered for sale to the end consumer."

c) Furthermore that section 8-101.10 (A) be modified to reflect that it also applies to food that is donated with the following modification: "The REGULATORY AUTHORITY shall apply this Code to promote its underlying purpose, as specified in § 1-102.10, of safeguarding public health and ensuring that FOOD is safe, unADULTERATED, and honestly presented when offered to the CONSUMER or for FOOD DONATION."

2. That FDA publish supplemental guidance or interpretive language that addresses safe food donation practices and its relationship to current Food Code provisions, where appropriate. Among other issues, the FDA guidance should specifically address donation of the following:

a) FOOD requiring a VARIANCE as specified in 3-502.11 and 3-502.12 without a VARIANCE.

b) Exposed FOOD that has been on display to CONSUMERS or that has been offered for customer self-service.

c) TCS FOOD that has been held or displayed for sale or service using time alone without temperature control as specified in 3-501.19

d) FOODS packaged in the FOOD ESTABLISHMENT and that may or may not be required to be labeled when offered for sale or service in the FOOD ESTABLISHMENT

e) FOODS that are offered for sale or service in an unPACKAGED form in the FOOD ESTABLISHMENT.

f) JUICE PACKAGED in a FOOD ESTABLISHMENT that has not been treated to yield a 5-log reduction of the most resistant microorganism of public health significance.

g) Animal-derived foods that is FOOD offered, served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in READY-TO-EAT form or as an ingredient in another READY-TO-EAT and for which FOOD ESTABLISHMENTS are required to inform CONSUMERS of the increased risk of consuming such FOOD by way of a DISCLOSURE and REMINDER, as specified in 3-603.11.

h) Refrigerated, READY-TO-EAT TCS FOOD that is subject to the date marking requirements in 3-501.17

- i) FOOD that bears a quality-based or safety-based date label that was applied by the manufacturer or the FOOD ESTABLISHMENT and for which the date has passed.
- j) FOOD donated in bulk packaging, with or without a label.

Submitter Information 1:

Name: Sandra Craig
Organization: S.C. Dept. of Health & Environmental Control
Address: 2600 Bull Street
City/State/Zip: Columbia, SC 29210
Telephone: 8038960614
E-mail: craigsd@dhec.sc.gov

Submitter Information 2:

Name: Mitzi Baum
Organization: Stop Foodborne Illness
Address: 4809 North Ravenswood Suite 214
City/State/Zip: Chicago, IL 606040
Telephone: 7732696555
E-mail: mbaum@stopfoodborneillness.org

It is the policy of the Conference for Food Protection to not accept Issues that would endorse a brand name or a commercial proprietary process.